

UNITED STATES OF
AMERICA,

SAMUEL R. FRANKLIN,


No.: 3:05-CR-13
Judge Thomas A. Varlan

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As a legal matter, the two-level increase is unwarranted. The most recent Presentence Report indicates that because the statement was made under oath, the two-level increase *per se* applies. See Presentence Report 6/21/05 ¶ 22. The basis for this legal conclusion is most likely grounded in Application Note 4(b) which reads, “The following is non-exhaustive list of examples of the types of conduct to which this adjustment applies: (b) committing, suborning, or attempting to suborn perjury.” USSG § 3C1.1 comment. note 4(b) (2005). However, this conclusion is indeed in error as the government cannot merely rely on the alleged perjury to show obstruction. Rather, this Court must still find by a preponderance of the evidence that the alleged perjury had “an *actual obstructive effect* on the ‘instant offense’ to trigger the enhancement.” United States v. Roberts, 243 F.3d 235, 240 (6th Cir. 2001) citing United States v. Perez, 50 F.3d 396, 400 (7th Cir. 1995) (emphasis added).

Respectfully submitted on June 24, 2005.

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Served on June 24, 2005.

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